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REMARKS

Claims 1 – 16 remain in the application and stand rejected. Claims 1 – 6, 8 – 11, and 13 – 16 are amended herein. No new matter has been added. Although this Amendment is being timely filed, the Commissioner is hereby authorized to charge any fees that may be required for this paper or credit any overpayment to Deposit Account No. 19-2197.

Claims 1 – 11 and 13 – 16 are objected to for being grammatically incorrect. Further, claims "1, 4, 10, 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention."

> The MPEP provides in pertinent part that
>
> 2173.02 Clarity and Precision [R-1] The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but **should not reject claims or insist on their own preferences** if other modes of expression selected by applicants satisfy the statutory requirement.

(emphasis added.)

Claim 1 is objected to for mentioning "telephony Internet server" and "to identify to said software dispatcher," for which it is asserted should be replaced with "telephony internet server" and "to identify said software dispatcher," respectively. However, the applicants note that "Internet" is a proper name, and thus, is properly capitalized. Accordingly, "Internet" is not an informality, and no change is warranted. Further, the second objected to phrase (which is also objected to in claim 16) is taken out of context, with claims 1 and 16 reciting "message receivers

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adapted to identify to said software dispatcher particular messages for receiving" at lines 7 – 8 and 6 – 7, respectively. Thus, the message receivers are identifying specific messages for the software dispatcher, which the software dispatcher is receiving. Amending the second objected to phrase as the Office action suggests, i.e., that the message receivers are identifying the software dispatcher completely changes the meaning of the claim. Thus, "message receivers adapted to identify to said software dispatcher" is not an informality, and no change is warranted. Claims 1 and 16 are also rejected as being indefinite for the recitation of "said message receivers" at the same location. Responsive thereto, "said message receivers" has been deleted from both claims. Reconsideration and withdrawal of the objection to and rejection under 35 U.S.C. §112 of claims 1 and 16 is respectfully solicited.

Claims 2 – 6, 8 – 11 and 13 – 15 are objected to for beginning with "A" instead of "The." Applicants note that both forms are equally acceptable. Furthermore, a quick search of the PTO's searchable patent database for "3. A" results in 2,831,862 hits; it is reasonably likely that a significant portion of those hits are not independent claims. An independent claim is directed to the genus. Each independent claim may be directed to one species or an individual member, which may or may not be the same individual as recited in the independent claim. However, be that as it may, rather than belabor the issue, the applicants have amended claims 2 – 6, 8 – 11 and 13 – 15 as indicated by the Examiner. Reconsideration and withdrawal of the objection to claims 2 – 6, 8 – 11 and 13 – 15 is respectfully solicited.

Claim 4 is rejected because it is asserted that "said messages" lacks antecedent basis. While the applicants believe that "sent said messages being sent" is somewhat redundant, rather than belabor the issue, applicants have amended claim 4 herein. Reconsideration and withdrawal of the rejection under 35 U.S.C. §112 claim 4 is respectfully solicited.

Claims 5 and 11 are objected to because, it is asserted that "field can comprise" is informal. Responsive thereto, claims 5 and 11 are amended herein to recite that "said value field further comprises... ." Reconsideration and withdrawal of the objection to claims 5 and 11 is respectfully solicited.

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Claims 6 and 7 are objected to because, it is asserted that "said list" should be "said list of message receivers." However, there is only one list recited in claim 1. Thus, including "of message receivers" adds nothing to the understanding of the claim. Neither are the applicants aware of anything that would support such an assertion that what follows and modifies a noun must be repeated for antecedent basis. If claim 1 had recited a message receiver list, perhaps the applicants would be inclined to agree that the dependent claims should recite the same. However, that is not what is recited, and if it were, these claims would have been rejected, not objected to. Accordingly, no change to "said list" is necessary. Reconsideration and withdrawal of the objection to claims 5 and 7 is respectfully solicited.

Claim 10 is rejected under 35 U.S.C. §112 as because it is asserted that "said dispatching messages" lacks antecedent basis. Responsive thereto, claim 10 is amended to recite "wherein the step of dispatching messages comprises dispatching messages... ." Reconsideration and withdrawal of the rejection of claim 10 under 35 U.S.C. §112 is respectfully solicited.

Claims 1, 6, 7 and 12 – 16 are rejected as being unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,564,261 to Gudjonsson et al. in view of U.S. Patent No. 6,560,329 to Draginich et al., and Coulouris et al., *Distributed Systems Concepts and Design*, Second Edition, 1994, pp. 34 – 38, and U.S. Patent No. 6,574,605 to Sanders et al. Claims 2 – 5 and 8 – 11 are rejected under 35 U.S.C. §103(a) over Gudjonsson et al., Draginich et al., Coulouris et al. and Sanders et al. in further combination with U.S. Patent No. 6,335,927 to Elliott. The rejection is respectfully traversed.

35 U.S.C. §103(a) provides in pertinent part "[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that **the subject matter as a whole would have been obvious ... .**" (emphasis added.) Thus, obviousness requires that a claim (each and every rejected claim), as a whole, must be suggested by the references. An obviousness rejection cannot be based on the resort to various (non-pertinent) references and the combination of bits and pieces of the references in the light of Applicants' teachings. An extensive discussion of the criteria to be applied in obviousness

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rulings is set forth in *Aqua-Aerobic Systems Inc. v. Richards of Rockford Inc.*, 1 U.S.P.Q. 2d
1945, 1955-57 (N.D. Ill. 1986).

Gudjonsson et al. teaches a loosely connected confederation of server clusters where
clients, including software entities under operating system (OS) control and devices on a
communications network, have secure access to a cluster. *See, e.g.*, col. 2, lines 51 – 67.
Gudjonsson et al. "FIG. 13 illustrates the way the system/network of this invention may be
broken into components, and some of the dependencies between components." Col. 17, lines 1 –
3. Gudjonsson et al., at col. 17, line 48 – col. 18, line 14, describes a framework component 67
in Figure 13 that is part of a firewall/router for a secure cluster. "Framework 67 is thus
responsible for providing a decent environment in which to write services, which transparently
(to the services) ensures scalability and robustness." *Id*, col. 18, lines 11 – 14.

It is asserted that "the server dispatching the messages can be anywhere on the network
(e.g., a device handler is a communication endpoints to which the routing service can dispatch
invitations. Device handlers are specifically used to interface with other networks, col. 2,
line 52 – col. 3, line 20) [sic]." However, this passage of Gudjonsson et al. teaches that clients
can have access to basic services including dynamic properties (online status or user's presence),
contact lists and contact information (e.g., the AOL Instant Messenger (AIM) or Yahoo!
Messenger buddy list) and message routing (e.g., inviting an on-line buddy to chat). *See, e.g.*,
col. 3, lines 1 – 13. In particular, Gudjonsson et al. users can "send invitations to other users to
establish an arbitrary communication session (e.g., text chat session, voice chat session, web
conference, etc.) ... [with] the routing service for the sending/inviting user send[ing] the
invitation to the routing service for the receiving user." *Id*, lines 14 – 20. Applicants note that
this hardly describes a "the server dispatching the messages" as the Office action asserts.
Instead, Gudjonsson et al. clients send messages routed by a routing service.

Draginich et al. is cited to teach a "server coupled between a packet network and a
private branch exchange." Coulouris is cited to teach dispatching messages synchronously and
asynchronously.

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Sanders et al. is cited to teach "dynamically configuration [sic] (e.g., lines 36 — 46, col. 2) [sic] and balance system workload (e.g., lines 30 – 36, col. 2) [sic]." Applicants note that both of these citations are to purported advantages of the Sanders et al. invention. Purported advantages seldom provide any (much less sufficient) details for accomplishing what arrives at the purported advantage. Be that as it may, however, it is asserted in the Office action that

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Draginich, Gudjonsson and Coulouris with the teachings of Sanders in order to facilitate dynamically configure and balance system workload because the dynamic configuration would eliminate manual assignment which would enhance the system functionality.

No source is provided for the alleged motivation that "[b]alancing system workload would enhance handling of the messages by the system in a reliable manner."

Sanders et al. teaches "a system and method for strategic services enterprise workload management ... that enables an organization such as a **financial institution** to route any channel service **to customer service representatives** at any capable service site." Abstract, lines 1 – 6 (emphasis added). Thus, Sanders et al., assigned to Citibank, N.A., teaches a method of managing financial institution customer service representative workload, i.e., a business method. *Id*, lines 7 – 14 (emphasis added). The advantages upon which the Office action relies recite that "such a method and system ... maintains and monitors a service professional skill set and availability ..." and "real time monitoring of service channel traffic, staffing activities, average speed of answer, and handle time categories at the enterprise, site, unit, and individual levels."

So, the above allegation of obviousness, essentially, asserts that it would have been obvious at the time the present invention was made, to combine the business method of Sanders with a loosely connected confederation of server clusters where clients, including software entities under operating system (OS) control and devices on a communications network that have secure access to a cluster of Gudjonsson et al., and the Draginich et al. "server coupled between a packet network and a private branch exchange" all synchronously and asynchronously dispatching messages as described in Coulouris et al. While the Office action offers specific alleged suggestions to combine individual features of individual references, there is no explanation why a person of ordinary skill in the art, absent the teaching of the present

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application in hindsight, would be inclined to select those four references together, just select those specific features from each reference, and combine the selected features to result in the subject matter as a whole as recited in claims 1, 6, 7 and 12 – 16. While, "[o]ne cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)" (MPEP 2145 Consideration of Applicant's Rebuttal Arguments [R-2], VI); neither can the examiner combine references individually to show that "the subject matter as a whole" is obvious. Thus, it is apparent that the present application is being used as a template to select references, select features from the selected references and to assemble the selected features to result in the present invention. Such a use of the application in hindsight to suggest combining, and as a motivation and template to combine, is improper. Therefore, the combination of Gudjonsson et al., Draginich et al., Coulouris et al. and Sanders et al. does not make claims 1, 6, 7 and 12 – 16 obvious under 35 U.S.C. §103(a). Reconsideration and withdrawal of the rejection of claims 1, 6, 7 and 12 – 16 is respectfully solicited.

Regarding the rejection of claims 2 – 5 and 8 – 11 under 35 U.S.C. §103(a) over Gudjonsson et al., Draginich et al., Coulouris et al. and Sanders et al. and further in view of Elliott et al.; Elliott et al. fails to add anything to the teachings of Gudjonsson et al., Draginich et al., Coulouris et al. and Sanders et al. to suggest the present invention as a whole as recited in claims 1 or 7 from which claims 2 – 5 and 8 – 11 depend. Accordingly, the combination of Gudjonsson et al., Draginich et al., Coulouris et al., Sanders et al. and Elliott et al. does not make claims 2 – 5 and 8 – 11 obvious under 35 U.S.C. §103(a). Reconsideration and withdrawal of the rejection of claims 2 – 5 and 8 – 11 is respectfully solicited.

The applicants thank the Examiner for efforts, both past and present, in examining the application. Believing the application to be in condition for allowance, both for the amendment to the claims and for the reasons set forth above, the applicants respectfully request that the Examiner reconsider and withdraw the objection to claims 1 – 11, 13 – 16, reconsider and

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withdraw the rejection of claims 1 – 16 under 35 U.S.C. §§103(a) and 112 and allow the application to issue.

Should the Examiner believe anything further may be required, the Examiner is requested to contact the undersigned attorney at the telephone number listed below for a telephonic or personal interview to discuss any other changes.

Respectfully submitted,

August 26, 2005   _Francis Montgomery_
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